HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

–

WRIT PETITION NO. 15053 OF 1996

BETWEEN

I. Kusume Janardhana Rao & others

.....**Petitioners**

And

Government of Andhra Pradesh

Rep. by its Secretary, Revenue Department,

Hyderabad & others

.....**Respondents**

:: O R D E R::

Counsel for Petitioners : Smt. P. Vijaya Kumari Shri P. Sree Raghuram

Counsel for Respondents : Government Pleader for

Land Acquisition.

Dated: 14.06.2006

This is a petition for quashing notification dated 24.02.1996 issued by Collector, West Godavari (respondent No.2) for acquisition of land comprised in various parcels of land including Survey No.72 situated at Nadipudi Village, Penugonda Mandal.

In the affidavit filed by him, petitioner No.1 has averred that he is a tenant of Sri Subrahmanyeswara Swamy Temple, Nadipudi Village, Penugonda Mandal, West Godavari District and has been cultivating the land. He has further averred that vide Notification dated 26.03.1996, respondent No.2 initiated proceedings for acquisition of different parcels of land including Survey No.72. Still further, he has averred that notice of the proposed acquisition was neither given to the petitioners nor the same was published in daily newspapers and in the village. Another plea taken by the petitioners is that the land is being acquired by invoking the urgency clause contained in Section 17 of the Land Acquisition Act, 1894 (for short 'the Act') and this would result in depriving the interested persons of the right to represent their cause against the proposed acquisition.

In the counter-affidavit filed by Smt. K. Sarada Devi, Revenue Divisional Officer and Land Acquisition Officer, Kovvur, it has been admitted that the petitioners have been cultivating different parcels of land comprised in Revenue Survey No.72 situated in Nadipudi Village. It has been further averred that land covered by Revenue Survey No.72/1A and 72/1D belong to Sri Subramanyeswara Swami Vari Devasthanam, Nadipudi. According to Smt. K. Sarada Devi, Notification dated 24.02.1996 issued by respondent No.2 under Section 4(1) was published in West Godavari District Gazette (Extraordinary) dated 28.03.1996. It was also published in local newspapers (Eluru Times and Gopikrishna dated 28.03.1996). The draft declaration was published in West Godavari District Gazette No.65 (Extraordinary) dated 29.03.1996 and local newspapers Ratna Garbha and State Times dated 30.03.1996. The notice was also published in the village on 18.04.1996 and a copy thereof was affixed on the notice board of Gram Panchayat, Nadipudi. According to the respondents,

enquiry under Section 5-A of the Act was dispensed with because the land was urgently needed for being distributed among weaker sections of the society. Smt. K. Sarada has controverted the petitioners' assertion that they are tenants of the land belonging to the temple. According to her, the land is entered in the revenue records in the name of the Deity and this was reflected in the draft notification as well as draft declaration.

I have heard learned counsel for the parties and perused the record.

Since the petitioners have neither filed rejoinder affidavit to controvert the averments contained in the affidavit of Smt. K. Sarada Devi nor produced documentary evidence before the Court to show that the temple management had leased out the property in question to them and their names were entered in the revenue records, it is not possible to entertain their plea that the impugned acquisition is vitiated due to violation of the mandate of Section 4(1) of the Act, which casts a duty on the competent authority to serve notice on the owner/occupier.

Learned counsel for the petitioners made valiant effort to persuade me to hold that even though the names of the petitioners may not have been entered in the revenue records, the factum of their physical possession should have been taken into consideration by the competent authority and they should have been heard before finalisation of the acquisition proceedings, but I have not felt impressed. In my considered view, notice of the acquisition is required to be served only on the owner. A person whose name is not entered in the revenue records cannot question the acquisition proceedings on the ground of lack of notice.

In view of the above conclusion, I do not consider it necessary to examine and decide the question whether enquiry under Section 5-A of the Act could have been dispensed with for the purpose of acquisition of land meant for providing house sites to the weaker sections of the society.

For the reasons mentioned above, the writ petition is dismissed.

G.S.SINGHVI, CJ

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14.06.2006